## REMARKS

Claims 1-25 are pending in this application.

Claims 2, 3 and 16 were objected to due to informalities in the language.

Claims 10, 11, 19, 20 and 23 were objected to but the examiner indicated that they
would be allowable if rewritten in independent form. .

Claims 1-9, 12-18, 21, 22, 24 and 25 are rejected under 35 USC 102.

**Claim Objections due to informalities:** Claims 2, 3 and 16 were objected to
because of informalities regarding typographical errors. The problems noted by the
examiner have been corrected by the above amendments.

**Allowable Subject Matter:** Claims 10, 11, 19, 20 and 23 were indicated as
allowable; however, they were objected to as being dependent upon a rejected base
claim but would be allowable if rewritten. Applicant respectfully requests that this
objection be held in abeyance until prosecution of the parent claims is completed.

**Claim Rejections – 35 USC § 112** Claims 2, 3 and 16 were rejected under 35 USC
112 as being indefinite. The problems noted by the examiner have been corrected
by the above amendments.

**Claim Rejections – 35 USC § 102:** Claims 1-9, 12-18, 21, 22, 24 and 25 were
rejected under 35 USC 102(e) as being anticipated by U.S. Pat. No. 7,058,007 to
Daruwalla et al (Daruwalla").

Applicant respectfully requests reconsideration and withdrawal of this rejected for the
following reasons:

Applicant's invention relates to a particular technique for detecting failure in a system
and for activating a backup unit. As indicated in applicant's specifications, in the

prior art "there are a variety of different types of mechanisms for detecting failure and activating backup units" (applicant's specifications page 2 line 11).

The technique recited in applicant's claim 1 involves (as recited in claim 1):

sending "a control packet to the backup unit via said network interface without utilizing said operating system software".

The examiner states that:

"Daruwalla teaches the cutover logic residing in hardware and after cutover has occurred the protection CMTS taking over for the working CMTS, this in interpreted as the improvement which include a notification program that operates when the exception handler is activated, said notification program being adapted to send a control packet to the backup via said network interface unit with (sic) utilizing said operating system software, whereby said backup unit can be notified immediately when said first unit suffers a software fault"

The first part of the above quote indicates what Daruwalla teaches (according to the examiner), namely that:

"Daruwalla teaches the cutover logic residing in hardware and after cutover has occurred the protection CMTS taking over for the working CMTS"

From the above teaching in Daruwalla, the examiner goes on to conclude or speculate that:

"this in interpreted as the improvement which include a notification program that operates when the exception handler is activated, said notification program being adapted to send a control packet to the backup via said network interface unit with (sic) utilizing said operating system software, whereby said backup unit can be notified immediately when said first unit suffers a software fault".

There is absolutely no teaching in the Daruwalla reference related to sending a control packet to the backup unit without utilizing the operating system software as

required by the applicant's claim. That is, there is absolutely no teaching of the following which is specified in applicant's claim.

sending "a control packet to the backup unit via said network interface without utilizing said operating system software".

It is noted that this is a rejection under 35 USC 102. Hence, this is not a question of obviousness. A rejection under 35 USC 102 should be based upon what the reference shows. It is entirely improper for the examiner to "interpret" a reference as showing something more than what is in fact shown in the reference as the examiner has done in this rejection. For the above reasons, withdrawal of the rejection of Claim 1 under 35 USC 102 is respectfully requested.

**Claim 2:** With respect to claim 2, the examiner indicates that Daruwalla system includes:

"cutover logic with resides in hardware that allows the protection CMTS to take over for the working CMTS"

Without any justification what-so-ever, the examiner then states:

"This in interpreted as a network router which includes a plurality of CMTS cards interconnected by a signal bus, one of said cards being a backup card, each of said cards including an ASIC which interfaces said card to said signal bus, a notification program activated when said exception handler is activated, said notification program being adapted to send a signal to said backup unit via said ASIC, to activate said backup unit".

The examiner references Figures 2a and 8a. Figure 2a merely shows several paths between cable modems and CMTS system. Figure 8a shows a CMTS unit 804 that includes a number of processors 855 and a memory 857. Figure 8a also shows the three layers of software on CMTS 804. Namely the network layer 834, the MAC layer 830 and the physical layer 832.

There is absolutely no showing in the Daruwalla reference of a CMTS card that includes an ASIC that interfaces the CMTS card to a signal bus as required by applicant's claim. Furthermore, there is no showing in the reference of a notification

program that is adapted to "send a signal to said backup unit via said ASIC" as recited in applicants claim.

It is noted that this is a rejection under 35 USC 102. Hence, this is not a question of obviousness. A rejection under 35 USC 102 should be based upon what the reference shows. It is entirely improper for the examiner to "interpret" a reference as showing something more than what is in fact shown in the reference as the examiner has done in this rejection. For the above reasons, withdrawal of the rejection of Claim 2 under 35 USC 102 is respectfully requested.

**Claim 3:** The examiner's reasoning for the rejection of applicant's claim 3 is similar to the rejection of applicant's claim 2. Thus the above discussion of claim 2 applies also to the rejection of claim 3 and for the above discussed reasons; withdrawal of the rejection of Claim 3 under 35 USC 102 is respectfully requested.

**Claims 4, 5, 6, 7, 8 and 9**: Rejected dependent claims 4, 5, 6, 7, 8 and 9 are dependent claim 1, either directly or through another claim. Dependent claims 4, 5, 6, 7, 8 and 9 distinguish from the reference for the same reasons as explained above relative to the parent claim 1. Reconsideration and withdrawal of the rejection of dependent claims 4, 5, 6, 7, 8 and 9 is therefore respectfully requested.

**Claim 12:** Claim 12 is an independent claim. Applicant's claim 12 is directed to a system that includes and first unit, a backup unit, an exception handler, a network interface and,

> "means operable when said exception handler is activated to send a control packet to said backup unit via said network interface means without utilizing said operating system means".

With respect to claim 12, the examiner states:

> "Daruwalla teaches the cutover logic residing in hardware and after cutover has occurred the protection CMTS taking over for the working CMTS".

Without any justification whatsoever the examiner then states:

> "this is interpreted as means operable when said exception handler is activated to send a control packet to said backup unit via said network interface means with(sic) utilizing said operating system means".

Nowhere in the Daruwalla reference is there any mention of sending "a control packet" to the backup unit via a network interface as specified by applicant's claim.

It is noted that this is a rejection under 35 USC 102. Hence, this is not a question of obviousness. A rejection under 102 should be based upon what the reference shows. It is entirely improper for the examiner to "interpret" a reference as showing something more than what is in fact shown in the reference as the examiner has done in this rejection. For the above reasons, withdrawal of the rejection of Claim 12 under 35 USC 102 is respectfully requested.

**Claims 13 to 18:** Claims 13 to 18 are dependent upon claim 12. Reconsideration and allowance of dependent claim1 13 to 18 is requested for the same reasons as explained above relative to the parent claim 12.

**Claim 21:** Claim 21 is an independent claim. Claim 21 is directed to a method of notifying a backup unit that a first unit has suffered a fault. The first unit includes an operating system, an exception handler and an interface unit that can communicate with the backup unit.

The examiner states:

> "Daruwalla teaches the cutover logic residing in hardware and after cutover has occurred the protection CMTS taking over for the working CMTS".

Without any justification whatsoever the examiner then states:

> "this is interpreted as activating said exception handler when said operating system suffers a software fault, sending a notification from said exception handler to said interface unit when said exertion hander(sic) is activated, activating said interface unit to send a notification to said backup unit without utilizing said operating system".

There is absolutely no teaching in Daruwalla of the following steps recited in applicant's claim 21. :

> "sending a notification from said exception handler to said interface unit when said exception handler is activated,

activating said interface unit to send a notification to said backup unit without utilizing said operating system software"

It is noted that the rejection of claim 21 is a rejection under 35 USC 102. Hence, this is not a question of obviousness. A rejection under 35 USC 102 should be based upon what the reference shows. It is entirely improper for the examiner to "interpret" a reference as showing something more than what is in fact shown in the reference as the examiner has done in this rejection. For the above reasons, withdrawal of the rejection of Claim 21 under 35 USC 102 is respectfully requested.

**Claims 22, 24 and 25**: Claims 22, 24 and 25 are dependent claims that are dependent upon claim 21. These dependent claims are patentable for the same reasons as explained above relative to their parent claim. Reconsideration and allowance of dependent claims 22, 24 and 25 is therefore respectfully requested.
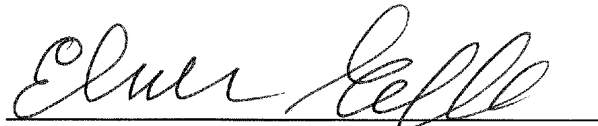
## CONCLUSION:

For the reasons give above, reconsideration and allowance of claims 1-9, 12-18, 21, 22, 24 and 25 as amended is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

**Customer No. 20575**

Respectfully submitted,

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